

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

ALVIN BALDUS, et al.,

Plaintiffs,

TAMMY BALDWIN, et al.,

Intervenor-Plaintiffs,

Case No. 11-CV-562  
JPS-DPW-RMD

vs.

MICHAEL BRENNAN, et al.,

Defendants,

F. JAMES SENSENBRENNER, JR., et al.,

Intervenor-Defendants.

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VOCES DE LA FRONTERA, INC., et al.,

Plaintiffs,

Case No. 11-CV-1011  
JPS-DPW-RMD

vs.

MICHAEL BRENNAN, et al.,

Defendants.

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**STIPULATION REGARDING TESTIMONY RELATED TO CLAIMS AND DEFENSES  
AS TO THE CHALLENGE TO 2011 WISCONSIN ACT 44**

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The Intervenor-Plaintiffs, the GAB Defendants, and the Intervenor-Defendants,  
comprising all parties to this litigation still asserting any claim or defense as to the challenge to  
2011 Wisconsin Act 44, by their undersigned counsel, hereby stipulate and agree to the  
following:

1. In lieu of live testimony, the parties agree that if taken before the Court, the trial testimony of lay witness David R. Obey would substantially reflect the attestations found in his Affidavit dated December 28, 2011 filed in this action (Trial Ex. 47), the transcript of his testimony at the Joint Public Hearing dated July 13, 2011 (Trial Ex. 19, pp. 82–96), the biographical information set forth in the Joint Pretrial Report’s paragraphs 631 through 634, and the following additional sentence: “Because following county lines will not precisely provide equal population between congressional districts, minor adjustments can be easily made to provide equal population by moving a few small townships populations from one district to another as was done in Clark County in 2002.” The parties hereto further agree that Mr. Obey is not testifying as an expert witness and has not filed an expert report. By this stipulation, the parties stipulate only that Mr. Obey’s testimony would substantially reflect the contents of the above materials, and they do not stipulate that any or all of the included statements are necessarily true or necessarily relevant to this litigation.
2. In lieu of live testimony, the parties agree that if taken before the Court, the trial testimony of lay witness Andrew D. Speth would testify in accordance with the contents of the “Stipulated Testimony of Andrew D. Speth,” attached hereto as **Exhibit A**. By this stipulation, the parties stipulate only that Mr. Speth’s testimony would substantially reflect the contents of Exhibit A, and they do not stipulate that any or all of the included statements are necessarily true or necessarily relevant to this litigation.
3. In lieu of live testimony on matters specific to Act 44, but not limiting in any way live testimony relating to or bearing upon the challenges to 2011 Wisconsin Act 43 in these consolidated cases, the parties agree that if taken before the Court, the trial testimony of

expert witness Dr. Ronald Keith Gaddie would substantially reflect the contents of his initial Expert Report submitted in this action and dated December 13, 2011 (Trial Ex. 2005) relating to Act 44, including pages 8 through 11 and the accompanying Tables 10 and 11, as well as the contents of his Rebuttal Expert Report submitted in this action and dated January 13, 2012 (Trial Ex. 58) relating to Act 44, including paragraphs 2 and 3 and the accompanying Table 1, Map 1a, and Map 1b. The parties also agree to the inclusion of the statement of the background of Dr. Gaddie as an expert witness contained in paragraph 627 of the Joint Final Pretrial Report.

4. The parties agree that the Court may consider those portions of the deposition of Dr. Erik V. Nordheim designated by the Intervenor-Plaintiffs in Exhibit C to the Joint Final Pretrial Report, except that the parties agree that the listed portions of that designation should have read (and should now read) to end with line 3 on page 64, not line 23 thereof. The parties have, by previous stipulation, stipulated to certain tables and facts based on Dr. Nordheim's analysis, agreed that Dr. Nordheim would not offer any testimony at trial and that he has not offered, and agreed that he would not offer any opinion other than his response to the analysis of Dr. Gaddie in the designated portions of Dr. Nordheim's deposition.
5. The parties agree that the Court may consider those portions of the Deposition of Kevin Kennedy designated by the Intervenor-Plaintiffs in Exhibit C to the Joint Final Pretrial Report. The parties have previously stipulated that the congressional districts under Act 44 achieve ideal population equality.
6. The parties hereto agree that, in addition to the foregoing stipulation as to what the contents of live testimony would be if taken, the Court may consider those portions of the

Deposition of Andrew D. Speth designated by the Intervenor-Plaintiffs in Exhibit C to the Joint Final Pretrial Report, as well as those portions of his deposition designated by the Intervenor-Defendants in their designations attached hereto as **Exhibit B**.

7. The parties hereto agree that the Court may consider all facts in the Joint Final Pretrial Report to which the parties have previously stipulated that relate to Act 44, including but not limited to paragraphs 190 through 231 of that document. By this stipulation, the parties do not stipulate that any such stipulated fact is necessarily relevant or material to this litigation, although they have previously stipulated that all such facts may be treated as true for the purposes of this litigation.
8. The parties further agree that the following exhibits and tables may be entered into evidence for the Court's consideration as to Act 44:
  - Trial Exhibit 1014 (2002 map of congressional districts).
  - Trial Exhibit 1015 (2011 map of congressional districts (Act 44)).
  - Trial Exhibit 179 (overlay of 2002 and 2011 (Act 44) maps of congressional districts).
  - Trial Exhibit 180 (enlarged 2011 map of central Wisconsin).
  - Trial Exhibit 181 (highway map of central Wisconsin).
  - Trial Exhibit 196 (2010 census data for selected Wisconsin counties).
  - Trial Exhibit 205 (congressional district boundaries from selected Wisconsin Blue Books, 1935 through 2002).
  - Trial Exhibit 43B (maps received by Mr. Speth from Erik Olson, chief of staff to Congressman Ronald Kind, on June 3, 2011).

- Trial Exhibit 43C (maps of Wisconsin with county boundaries and handwriting of Mr. Speth).
- Trial Exhibit 1065 (Congresswoman Gwendolynne Moore's Responses to Defendants' Interrogatories, Requests for Production of Documents and Requests for Admission), including all exhibits thereto.
- Trial Exhibit 1066 (Congressman Ronald Kind's Responses to Defendants' Interrogatories, Requests for Production of Documents and Requests for Admission), including all exhibits thereto.
- Trial Exhibit 1067 (Congresswoman Tammy Baldwin's Responses to Defendants' Interrogatories, Requests for Production of Documents and Requests for Admission), including all exhibits thereto.
- Intervenor-Defendants' Trial Exhibit 2001 (1969 Wis. Stats. ch. 3).
- Intervenor-Defendants' Trial Exhibit 2002 (1989-90 Wis. Stats. § 3.09 map of Wisconsin's congressional districts).
- Intervenor-Defendants' Trial Exhibit 2003 (1991-92 Wis. Stats. § 3.00 map of Wisconsin's congressional districts).
- Intervenor-Defendants' Trial Exhibit 2004 (Centergy.net, "Overview of Centergy" webpage).
- Tables 26, 27, 29, 30, and 31 of Exhibit A of the Joint Final Pretrial Report.

9. The parties hereto further agree that the Court may and should consider the arguments proffered by the parties hereto in submissions previously filed with the Court on facts and law relating to Act 44, including but not limited to the following:

- a. The Brief in Support of the Intervenor-Defendants' Motions for Judgment on the Pleadings Dismissing All Claims of Plaintiffs' Second Amended Complaint Relating to 2011 Wisconsin Act 44, Creating Congressional Districts, and to Dismiss All Claims of Intervenor-Plaintiffs for Failure to State a Claim upon which Relief Can Be Granted (Dkt. 75), the respective response briefs of the Intervenor-Plaintiffs (Dkt. 98) and the Baldus Plaintiffs (Dkt. 105), and the Intervenor-Defendants' reply briefs (Dkt. 115, 116).
- b. The Brief in Support of the GAB Defendants' Motion for Summary Judgment (Dkt. 129), and the Response Brief of the Intervenor-Plaintiffs (Dkt. 171).
- c. The Trial Brief of the Intervenor-Plaintiffs (Dkt. 163).
- d. The Trial Brief of the Baldus Plaintiffs (Dkt. 165).
- e. The Intervenor-Defendants' Brief in Response to the Intervenor-Plaintiffs' Trial Brief (Dkt. 168).
- f. The GAB Defendants' Brief in Response to the Baldus Plaintiffs' Trial Brief (Dkt. 174).

10. The parties agree that no further factual submissions related to Act 44 will be made during the remaining course of the trial in this litigation or thereafter.

Dated: January 24, 2012

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## Exhibit A



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

ALVIN BALDUS, et al.,

Plaintiffs,

TAMMY BALDWIN, et al.,

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**STIPULATED TESTIMONY OF ANDREW D. SPETH**

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The parties stipulate that, if taken before the Court, the trial testimony of Andrew Speth would substantially reflect the following. The parties stipulate only that the following would be Mr. Speth's testimony, and do not stipulate that each of the included statements is necessarily true.

## TESTIMONY

In drafting Act 44, my understanding was that the only constitutional or legal requirement guiding the drawing of the map was the “one person, one vote” or “zero deviation” rule. So I made sure that the final Act 44 map complied with this requirement as perfectly as possible. However, our goals in drawing congressional districts were not only to be legal, but also fair and bipartisan. With these ends in mind, many other considerations beyond the principle of “one person, one vote” affected the lines drawn and the map ultimately embodied in Act 44.

Based on the population numbers provided by counsel at my deposition, it seems that by placing those portions of Clark County that had been in the old 3rd District into the new 7th District instead, one would mathematically arrive at a rough approximation—within a few thousand people—of population equality between the 3rd and 7th Districts. Being that much off from zero deviation between the sizes of congressional districts would not have accorded with my understanding that drafters of congressional districts must make every effort to achieve perfect population equality, which we did do in drawing up Act 44. I would have understood a difference of several thousand people to be potentially unconstitutional. Moreover, this imperfect change alone also would not have accounted in any way for the population changes needed in the other six Wisconsin congressional districts. These six districts—the 1st, the 2nd, the 4th, the 5th, the 6th, and the 8th— included those needing to “lose” the greatest number of people (the 2nd) and needing to “gain” the greatest number of people (the 4th). And, the proposal to simply shift parts of Clark County also ignores the many, many other considerations that go into drafting any congressional map, including Act 44. In aiming to get bipartisan support for the plan, for example, we made various changes based on the requests and recommendations of Republican and Democratic members of Wisconsin’s congressional

delegation. Thus, I did not start my drafting of Act 44 by looking at Clark County but, instead, by looking at Milwaukee County. I knew that that particular district needed to add the greatest amount of population based on the new census, and I knew that Congresswoman Moore had stated that she would like certain North Shore suburbs of Milwaukee County added to her district, rather than having her district spread south. So, I started there in Milwaukee County with the 4th District and worked my way out, and I incorporated various other considerations and preferences from Democrats and Republicans along the way. By the time I got to Clark County, the suggestion of a change to that county being the only change needed was not one I ever considered.

I certainly did not consider the minimization of media-market locales within a district to be constitutionally or legally required when I was drawing up congressional districts for Act 44. As I was in the process of drafting one of the versions of the map, Congressman Reid Ribble mentioned to me that if the new statute's lines for his district (the 8th) stayed as they were in the draft, he would not have to buy Rhinelander TV. Rhinelander is up in the Northwoods area, and if the western border of his district moved east, his district wouldn't reach the area around Rhinelander, since that area would all be in the 7th District. Specifically, I know I did *not* consider it in choices I made in drawing the 1st District, which Congressman Ryan represents, because under the previous districting plan, we already had to advertise in four TV markets: Rockford, Madison, Milwaukee, and Chicago. I anticipate that we will still have to advertise in all of these markets under Act 44, because the footprint of the 1st District does not change very much from the old statute to the new one.

I'm not sure if the Twin Cities media market extends to counties like Barron and Washburn, but I do assume that under Act 44, candidates in the 7th District would have a greater

incentive to buy advertising time in the Twin Cities media market. Neither Congressman Kind nor Congressman Duffy raised media-market concerns with me before or while I was drafting Act 44, and they did not raise those kinds of concerns with me about the final map.

By the time I was drafting Act 44's map, I had heard the 3rd District called a "Mississippi River" district in Wisconsin. In the first draft of the new map, I had the 2nd District going all the way over to the Mississippi, but that is not what is in Act 44. That is because Congressman Ryan pointed this out to me, saying that Congressman Kind expected the Mississippi River corridor to remain in the 3rd District under the new law. So, that change was reflected in the next draft of the map, and it is also in Act 44 itself. I had never heard of the 7th District being referred to as a "Wisconsin River" district. Under Act 44, it is a northern Wisconsin district. Likewise, I had never heard of the Wisconsin River being called "the hardest working river in the United States." I don't think I know what that means. I had also never heard of three counties in the center of Wisconsin being referred to as a "Ruralplex."

At the time that I was drawing the draft maps, my understanding of the phrase "community of interest" was that it meant individual municipalities and counties. I didn't consider multiple counties as being "communities of interest." But, I just thought that it would look bad politically if the new statute broke up certain metro areas. For example, if I were to have put the suburbs of Madison in a different district than Madison, or had done something similarly unreasonable, I assumed that such a feature of a map would raise objections from one of the members of the delegation or, otherwise, that it would just have made the map look wrong and made us, or the delegation as a whole, look bad. I wanted to avoid that, and I certainly took that goal in mind in drawing Act 44's map. We wanted to get the other House Members on

board with the plan, and we were hoping to get bipartisan support for it in the Wisconsin legislature.

Under the old statute, 11 counties were split into more than one congressional district. Under Act 44, 12 are split. This is something I was cognizant of while I was drafting and finalizing the map.

During the time that I was involved in drafting Act 44, I was not familiar with the concept of “core population retention,” as used by the counsel for the plaintiffs at my deposition. But one of our foundational principles in drafting the map was that we were not going to draw any two incumbent House Members together into one district. I know it happens in some other states, but we were not going to do things like that, because it would not look sensible and fair, and it was not consistent with our goals for the map. Likewise, we were not going to try to flip a given district from being a majority district for one party into being a majority district for another party. So I was kind of using the old map as a starting point in my mind of what the new one would need to look like. And the differences were generally the result of the preferences expressed by one or more of the members of the delegation. But once you make those changes from that input, you have to make other changes. Such as, because Congresswoman Baldwin mentioned that she preferred not to have to commute great distance that she thought made her less accessible, and that she therefore preferred her district to be moved west and out of Jefferson County in the east, we put all of Jefferson County (a very Republican county) into the Fifth District, and that created a domino effect from there. So after things like that, the districts do not all end up looking the same as they did under the old statute, but they are of course still in the same areas of the state, and the “core” of each district remained the same, as I saw it.

I am familiar with the concept of compactness in redistricting, though I did not think, and I have any reason to think now, that it is legally required for a map. Therefore, I did not consider compactness as any sort of *legal* principle in drafting Act 44's map, but as I understand the concept it certainly did play a role throughout the creation of the map that eventually became Act 44. I had heard of it by a time, certainly, early on in the process. For example, I did consider Congresswoman Baldwin's preference not to have to commute all the way to Jefferson County to meet constituents, and that is why that county is no longer in the 2nd District. Likewise, Congressman Petri expressed his concern that he was having to commute too far to get to the western edge of his district to meet his constituents, so we made some adjustments to the map based on that. At one point, Congressman Ribble said his district under the new map was too compact, and that he would no longer get to represent some of the northwestern counties in the old 8th District that he liked. Generally, we just did not want to make the districts in the new map look funny, because that would make us look not sensible and not fair. I was aware of certain new congressional districts in Illinois that were examples of things I consciously tried *not* to do in our map, because they did not look right, and in some people's view wouldn't be considered compact. I also think compactness means that you should basically keep a district intact.

I would request that my deposition testimony be corrected as follows: (1) On page 59, line 9 of my deposition transcript, the sentence, "I don't remember what else to say" should read, "I'm trying to remember what else he said." (2) On page 76, line 16 of my deposition transcript, the word transcribed as "partisan" should be "bipartisan." (2) On page 120, line 24 of my deposition transcript, the phrase "IL Regs" should be "Hill rags," which what Hill staffers call the various newspapers that are published for congressional offices on Capitol Hill.

Respectfully submitted,

FOLEY & LARDNER LLP

*s/ Thomas L. Shriner, Jr.*

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## Exhibit B



***Baldus et al. v. Brennan et al.*, E.D. Wisconsin, Nos. 11-CV-562, 11-CV-1011**

**INTERVENOR-DEFENDANTS' DEPOSITION DESIGNATIONS  
FOR TESTIMONY STIPULATIONS**

<b>Speth, Andrew</b>		
<b>Depo. Date</b>	<b>Trn. From (page:line)</b>	<b>Trn. To (page:line)</b>
January 17, 2012	15:14	16:21
January 17, 2012	18:2	18:17
January 17, 2012	32:10	33:6
January 17, 2012	39:1	41:9
January 17, 2012	42:23	44:2
January 17, 2012	45:2	46:12
January 17, 2012	50:3	50:21
January 17, 2012	52:8	55:4
January 17, 2012	57:14	57:25
January 17, 2012	60:14	61:18
January 17, 2012	75:23	77:10
January 17, 2012	99:21	100:16
January 17, 2012	114:23	116:1
January 17, 2012	120:3	123:20
January 17, 2012	145:14	146:10
January 17, 2012	149:17	150:11
January 17, 2012	151:14	151:22